IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1058 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPIN C SHAH C/O SHRADDHA ORGANICS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 1058 of 2001

MR RD DAVE for Petitioner No. 1

MR RC JANI for Respondent No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 15/01/2003

ORAL JUDGEMENT

1. By means of this petition the petitioner has sought for making declaration that the impugned action of

disconnecting electric supply on the factory premises of the petitioner by the respondent is illegal, arbitrary, unauthorized and bad in law and also for a direction to the respondent, their officers, servants, and agents, to connect forthwith the electricity supply of L.T. Industrial Connection at the Industrial unit of the petitioner and further to restrain the respondent, their officers, servants, and agents from raising any bill for minimum charges for the period during which the electric supply remains disconnected and for quashing and setting aside the impugned demand letter dated 5-8-2000 at Annexure-I to the petition, for Rs.98,426/- and for further direction to the respondent to pay damages and loss suffered by the petitioner.

2. An advertisement was published by the Gujarat Industrial Investment Corporation (for short "GIDC") for sale of the assets of the "Union Bearings (India) Ltd." / "Omega" Forgings Pvt. Ltd., situated in village Veraval in District Rajkot. The petitioner submitted a tender and he purchased the unit for Rs.7,75,000/- in the public auction u/s 29 of the State Financial Corporation Act, 1951, for recovery of the outstanding dues which were not paid by UBL Unit. However, electric supply was continued on the record of the respondent in the name of Omega Forgings Pvt.Ltd. The offer of the petitioner was accepted vide letter dated 20-4-1999 and full payment of Rs.7,75,000/- was made by the petitioner to G.I.D.C. and G.I.D.C.. handed over possession of the unit to the petitioner on 14-6-1999. After taking over the possession of the unit, the petitioner found that the electric connection was discontinued by the respondent at the industrial unit. The petitioner applied for reconnection of electric supply on 25-3-1999. When the petitioner met the officers of the respondent no. 2, he was informed that there was outstanding dues of UBL the previous industrial unit and unless and until that is paid, the electric supply could not be restored. Ultimately, the petitioner had filed writ petition being Special Civil Application No. 4684 of 1999 in this Court seeking appropriate relief challenging illegal demand of the past dues not paid by the erstwhile owner UBL and for directions to the respondent to restore electric connection.

3. This Court allowed the petition vide order dated 19-7-1999 and directed the respondents not to insist upon the petitioner to pay the outstanding dues of the previous owner of the factory and they were directed to give reconnection of electric supply forthwith. The petitioner vide the letter dated 31-7-1999 informed the

respondent no. 2 about the judgment and order of this Court passed in Special Civil Application No. 4684 of 1999 and a copy thereof was also supplied to the respondent no. 2. The petitioner again reminded the respondent G.E. Board vide letter dated 23-9-1999. The respondent no. 2 asked the petitioner to make necessary application in prescribed form "Form A1" to the Gujarat Electricity Board. Accordingly, the application in the prescribed form was also submitted to the respondent authority. Thereafter, the respondents issued FQ demand notice dated 8-10-1999 for payment of Rs.35,790/- and Rs.1,420-00 and the same were also paid by the petitioner and the electric connection of the petitioner was restored by the respondents. It is also stated that the original owner ULB was having HT Electric Connection of 125 HP. However, the petitioner submitted an application in the prescribed form for reducing it to 74 HP connection. Thus, the petitioner was requiring less electric supply. The officers of the respondent came at the site on 6-2-2001 without any prior notice or intimation and straightway disconnected the electric supply when the factory was working and the workers were performing their duty and production was going on. Therefore, the petitioner objected for disconnecting electric supply and requested them to give reason as to why electric supply was disconnected on oral as well as by writing letter dated 7-2-2001. The petitioner was informed by the respondent vide letter dated 7-2-2001 that audit department of the respondent authority had informed the respondent that there is deficit for payment of development charges and deposit as per F.Q. demand dated 4-8-2000. Since the required amount was not paid within 30 days electric supply was again disconnected. It was clarified that the development charges and deposit have to be charged from the new party as per the High Court's order as it was not the recovery for reconnecting charges from the petitioner. Subsequently, the respondent supplied F.Q. demand notice dated 4-8-2000 whereby the respondent had demanded payment of Rs.98,426/- under different heads like TC Charges, Development Charges etc. It is also stated therein that the petitioner has informed about the reasons with regard the said demand letter calling upon the petitioner to pay the amount of Rs.98,426/-.

4. An affidavit-in-reply has been filed on behalf of the respondent, wherein it is stated that the Gujarat Electricity Board has issued commercial circulars no. 465 and 676 dated 5-7-1997 on 22-1-1993. It is also stated that Commercial Circular No. 644 was conveying regarding how to deal with the cases of Transformer

Centre proportionate load demand either new or additional load instead of recovering 100% cost of Transformer Centre. It was decided while including the cost of Transformer Centre in the Estimate form quotation issued to the LT Industrial customer from total load demand wherein 20 HP will be deducted and for the balance of the demand load the proportionate cost of the Transformer Centre is to be recovered. The Demands LT Industrial power supply upto 20 HP power, such party is not required to pay any Transformer Centre charges. In case of demand of more than 20 HP load for LT Industrial connection, the proportionate charges for the Transformer Centre is to be recovered for their load demand in excess to HP. Such deduction of 20 HP is required to be given only once in such cases. Circular dated 676 dated 5-7-1997 issued about recovery of the amount of Rs.900/- per KVP/HP from LT Industrial Consumer. The consumer having Industrial Connection for 74HP, out of that according to Circular 645, 20 HP was given deduction and that is how he is required to pay Rs.900/- per HP x 54, which is excess for use of the petitioner and that is how the amount become payable is Rs.4,86,000/- which is a refundable security. It is mentioned that in case the amount is not paid to the respondent Gujarat Electricity Board, the respondent Gujarat Electricity Board was compelled to disconnect electric connection. It is clarified that no old due is recovered from the present petitioner and therefore there is no sense to raise a dispute by way of this petition by making false allegations against the respondent. Looking to 54 HP load Rs.48,00,000/- is chargeable by way of deposit. Thus, the petition is required to be rejected in limine.

5. The respondent Gujarat Electricity Board sent the letter dated 3-8-2002 to the petitioner for recovery of an amount of Rs.98,426/- though it is mentioned that due to some mistake the amount of Rs.1,08,426/- was written in that letter.

6. Heard the learned counsel for the petitioner and perused the relevant material on record.

7. After filing of this petition, the petitioner had requested the respondent G.E. Board to restore electric connection and it is informed by the learned counsel for the petitioner that electric connection has already been restored.

8. The contention of the learned counsel for the petitioner is that the action of the respondent Board of disconnecting the electric connection is illegal, unjust,

improper, bad in law and arbitrary. The demand notice dated 4-8-2000 is illegal, unreasonable and arbitrary and the same requires to be quashed and set aside. When the petitioner purchased the unit, the petitioner found that the power supply was disconnected. Therefore, the petitioner is entitled for the existing facility of electricity supply connection on depositing the reconnection charges only. Under the Rules, high-tension electric connection requires only an amount of Rs.1000/- though in the present case much more amount has already been deposited by the petitioner with the respondent Board for that purpose. The respondent again made demand by treating it as a new electric connection and the respondent G.E. Board cannot insist for recovery of the dues of the old owner from the present petitioner. He has relied on the decision of this Court in he case of (M/s.) Isha Marbles Vs. Bihar State Electricity Board and Anr., reported in 1995 (2) G.L.H. 134, wherein it has been held as under :

"The liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such liability will be on such owner or supplier.

The Board cannot seek the enforcement of contractual liability against the third party.

It was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits."

9. Learned counsel for the petitioner has also relied on the decision of this Court rendered in Special Civil Application No. 7454 of 1995 on 13-12-1995, wherein it has been held that "the respondent authorities cannot insist upon the petitioners that they should pay up the dues of the earlier consumer who was supplied electricity in the said premises."

10. Relying upon aforesaid both the cases the learned counsel for the petitioner argued that it is a case of reconnection and not for additional load or new connection. At this stage, additional development charge is to be paid by the persons who are required additional

load or new connection. The petitioner is an old owner who does not require additional load.

11. Learned counsel for the petitioner further contended that the petitioner has already deposited the amount of Rs.37,210/- which includes development charges and the amount of deposit. The respondents authorities are considering it as new connection and the petitioner has been required to pay additional amount of Rs.98,426/-. The petitioner has deposited the amount more than the amount for reconnection, the respondents cannot make any demand for any additional amount as it is not for additional load or it is not for new connection. It is not clearly mentioned in the demand notice as to which type of the development charges are required and though the development charge and reconnection charge as well as the amount of deposit which is required to be made have already been deposited. Unless it is specifically stated in the demand notice that all the charges to be paid by the petitioner, nothing can be charged from the petitioner. As such, the demand notice dated 4/5-8-2000 is liable to be quashed and set aside.

12. On the contrary, the learned counsel for the respondents contended that the demand notice dated 4/5-8-2000 issued to the petitioner has no concerned with the outstanding dues to be paid by the old owner. It is made clear by the letter dated 7-2-2001 that the deposit and development charges are required to be paid and there is no demand according to the High Court's order regarding reconnection charges. It is contended by the learned counsel for the respondents that in para 5 of the counter affidavit this fact is made clear that no old dues have been recovered from the present petitioner and therefore there is no sense to raise a dispute by way of filing this petition by making false allegations against the petitioner.

13. It is also contended that the respondents are not treating the petitioner's connection as new connection. Therefore, the ratio laid down in the decision of this Court is not applicable in the present case, as new connection nor they are charging old dues. It is a disputed question of facts as to whether the amount of development charges have been demanded and paid by the petitioner. It is a matter of contractual obligations and there is no violation of any fundamental right of the petitioner. At the most, it is violation of the terms of the contract and for that remedy of civil proceedings is available before the Civil Court and not before this Court. The demand notice has been sent to the petitioner

by the respondents by legal method and mode on the basis of the circulars issued by the respondent G.E. Board and validity and legality of those circulars has not been challenged by the petitioner in this petition. As such, the demand notice cannot be said to be illegal and invalid in any manner. The development is in the interest of general public and not for any individual or particular person. Looking to the rapid industrial growth and increasing demand of electricity energy in the State of Gujarat, it is necessary for the G.E. Board to develop the infrastructure facilities and to continue developing the same by providing transmission lines and substations to meet the power requirements of new applicants as well as existing consumers. Even though the Board is facing financial difficulties, it becomes necessary to develop infrastructure to keep pace with the rapid industrialization in the State. For that purpose, the Board development charges are required to be levied and two circulars dated 5-7-1997 and 22-1-1993 have been issued, wherein it is provided that 50% of cost, so recovered would be retained by the Board and the balance 50% thereof will be refunded to the concerned consumer in seven half yearly instalments after seven years from the deemed date of commencement of supply without giving any interest on the amount so recovered or refunded. In that connection, the learned counsel for the petitioner submitted that the petitioner's case is not covered under the aforesaid two Circulars which are in respect of the development charges to be levied from the new applicants or consumers or the existing consumers who require additional load of electric supply. Learned counsel for the petitioner contended that in the interest of public at large, there is no such provision and such additional development charges cannot be charged or recovered from the existing consumers who have not required additional load. The respondent G.E. Board is required to instal several transformers and new basic infrastructure facilities for that purpose, then new additional development charge is required to be levied which is not prohibited by any statutory provision or by any circular and it is in the interest of public at large which can be done so. It is not against the general policy of the public. As such, the demand of additional development charge cannot be said to be illegal or bad in the eye of law.

14. I have carefully considered the contentions raised by the learned counsel for the parties. It appears from the assertions made in the affidavit and counter affidavit as well as the letter dated 7-2-2001 that the respondent authorities have not made any charge

for the old dues of the previous owner and occupier. The demand notice is only in respect of the additional charge due to mistake committed in calculating the same pointed out by the Audit Department of the respondent Board. As such, the petitioner is not entitled for any relief claimed in the petition. Therefore, I do not find any substance in this petition. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs.

15. It is submitted by the learned counsel for the petitioner that more amount than the statutory amount has already been paid and the demand is made by the demand notice is without authority of law or power.

16. However, the petitioner would be at liberty to move the respondent authority to show that much more amount has already been paid by him and nothing is required to be deposited by the impugned notice. If such amount is again required to be paid, the respondent authorities may consider and decide the same in accordance with law. In case, the respondent authorities come to a conclusion that certain amount has already been deposited by the petitioner on earlier occasion, the same shall be adjusted. It is made clear that the representation can be made by the petitioner within two weeks from the date of receipt of this order and the authority concerned of the respondent is directed to decide the same within two weeks thereafter. In the facts and circumstances of this case, the electric connection of the petitioner may not be disconnected till the decision is taken by the concerned authority of the respondents on the representation to be made by the petitioner.

(Kundan Singh, J.)

/JVSatwara/